



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 5 2013

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Ms. Laura Velez Velez, Chair
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910-1488

Re: **Certification of Permit to be Issued Under Section 402 of the Clean Water Act**

Dear Ms. Velez:

The United States Environmental Protection Agency (EPA) has received an application for a permit renewal under the National Pollutant Discharge Elimination System (NPDES) from the following discharger in the Commonwealth:

<u>Discharge and Location</u>	<u>Applicant</u>	<u>NPDES Permit Number</u>
Aguirre Gas Port Offshore Liquified Natural Gas Terminal Jobos Bay, 3 Miles Offshore Salinas, Puerto Rico	Excelerate Energy, LLC 1450 Lake Robbins Drive, Suite 200 The Woodlands, Texas 77380	PR0027201

The application consists of application Form 1, Form 2D (Outfalls 001A/B through 005A/B, 006 through 009) and Form 2F (GasPort Fire Control System Test Water and Port-Starboard Water Curtain Discharge) submitted under a cover letter dated July 10, 2013.

We have enclosed a copy of the referenced application materials. In addition, we have enclosed the findings of our own reasonable potential analysis of the discharge from the Aguirre Power Plant Complex, which also withdraws water from Jobos Bay for cooling purposes, and may be similar in nature to this proposed effluent discharge. The analysis was performed using the reasonable potential analysis tool which we demonstrated to your staff last year, utilizing Discharge Monitoring Report data from the last five years as retrieved from the ICIS data system. We would direct your attention to columns J and L when reviewing the tables. Column J provides the Technical Support Document Estimated 95th Percentile Effluent Concentration. Column L shows the Puerto Rico Water Quality Standards (2010). We hope that you will find the information useful for your analysis.

It is our understanding that the applicant wishes to seek a mixing zone for the thermal discharge from this facility. We have enclosed the results of thermal modeling performed by the applicant. We would be interested in your preliminary feedback regarding this request and any additional information that will be necessary for your consideration.

In accordance with NPDES regulations on State certification, your agency's right to grant or deny certification will be deemed waived unless exercised within a specified reasonable time. The regulations (see 40 CFR §124.53(c)(3)) define that reasonable time to "not exceed 60 days from the date the draft permit is mailed to the certifying State agency unless the Regional Administrator finds that unusual circumstances require a longer time."

Nonetheless, if we are to include all conditions and requirements of Commonwealth law in the draft permit and, at the same time, comply with these regulations, we must receive your technical comments and tentative certification relating to the discharger identified above before we issue any public notice of a draft permit. Therefore, we must receive your technical comments and tentative certification within sixty (60) days of the date of this letter. Otherwise, we shall proceed with a separate public notice.

Any certification you submit to the EPA within that time frame, even though tentative, should be as complete as possible. It should not merely be in the form of a letter indicating effluent or other limitations which your agency would recommend for inclusion in a NPDES permit. The NPDES regulations are very specific about the requirement that States clearly identify what conditions are necessary to meet State law. 40 CFR §124.53(e) requires that State certification shall be made in writing and shall include:

- (1) "Conditions which are necessary to assure compliance with the applicable provisions of CWA Sections 208(e), 301, 302, 303, 306 and 307 and with appropriate requirements of State law;"
- (2) "When the State certifies a draft permit instead of a permit application, any conditions more stringent than those in the draft permit which the State finds necessary to meet the requirements listed in paragraph (e)(1) of this section. For each more stringent condition, the certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition;" and
- (3) "A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process." (Emphasis added.)

To summarize, if we receive your tentative certification relating to the discharger identified above within 60 days of the date of this letter and conditions necessary to meet Commonwealth law are identified in accordance with the specificity required by 40 CFR §124.53(e), we shall be able to include all Commonwealth requirements in our draft permit. Otherwise, we shall proceed to public notice without benefit of your tentative certification.

Whether or not we are constrained to proceed to public notice without your tentative certification, the right of your agency to grant or deny certification will be deemed waived unless exercised within sixty days following the date copies of any draft permit are sent to your agency. Furthermore, if your agency, in that 60-day time frame, does not provide the detail in its certification required by 40 CFR §124.53(e) with respect to any term or condition of the draft permit, the right of your agency to grant or deny certification with respect to such term or condition shall be deemed waived.